L. REV. 35. But the right to take land by eminent domain includes the taking of a limited interest in property in the nature of an easement. *Pacific Postal Telegraph-Cable Co.* v. *Oregon, etc. R. Co.*, 163 Fed. 967. See *Attorney-General* v. *Williams*, 174 Mass. 476, 55 N. E. 77, 178 Mass. 330, 59 N. E. 812; *Williams* v. *Parker*, 188 U. S. 491, 23 Sup. Ct. 440. And this might be under either theory of public use. A second plan would be for the state to purchase and retain the fee of the surrounding property; a third, for the state to resell subject to restrictions. Either of these would be within the broader interpretation of public use. But under the stricter view, there would be the difficulty of proving a sufficient public user beyond mere public advantage. Where the state retains the fee, it might be a close case. But where the right retained is solely in the nature of an easement, the method would be unconstitutional.

EVIDENCE — HEARSAY: IN GENERAL — ADMISSIBILITY OF DECLARATIONS ON QUESTIONS OF IDENTIFICATION. — At a trial for murder, in order to identify the defendant as the guilty party, the prosecution offered in evidence a declaration of the victim, in which he pointed out the accused and identified him as the assailant. The statement was not shown to be a dying declaration. *Held*, that the evidence is admissible. *State* v. *Findling*, 144 N. W. 142 (Minn.).

The court assumes a general relaxation of the rules of evidence on questions of identification. In a few respects this appears to be true. Thus the opinion rule does not exclude the opinions of properly informed witnesses concerning the identity of a person. *Craig* v. *State*, 171 Ind. 317, 86 N. E. 397; *State* v. *Powers*, 130 Mo. 475, 32 S. W. 984. Leading questions are also allowed with greater freedom. *Rex* v. *Watson*, 2 Stark. 116, 128. But see *Rex* v. *Dickman*, 5 Cr. App. R. 135, 142. These minor variations, however, scarcely sustain the broad ground taken by the court. An unsworn identification, by declaration alone or with gesture, presents all the elements of hearsay, and is therefore inadmissible by the weight of authority. *O'Toole* v. *State*, 105 Wis. 18, 80 N. W. 915; *State* v. *Houghton*, 43 Ore. 125, 71 Pac. 982. Some courts admit the declaration as part of the *res gesta*, on the ground that it accompanies and explains the material act of pointing out the accused. *Lander* v. *People*, 104 Ill. 248. Such a view, however, ignores the hearsay quality of the gesture itself, and virtually makes an accompanying gesture the only requisite for the admissibility of any declaration. The mere recognition of the defendant by the victim might possibly have enough probative value on the issue of identification to render it admissible as an expression of a material mental state. See *Mutual Life Ins. Co.* v. *Hillmon*, 145 U. S. 285; *Jacobs* v. *Whitcomb*, 10 Cush. (Mass.) 255. But this exception to the hearsay rule would not cover the accompanying descriptive declaration. *State* v. *Egbert*, 125 Ia. 443, 101 N. W. 191; *Clark* v. *State*, 39 Tex. Cr. R. 152, 45 S. W. 696. A different situation arises, of course, when a former identification is used to supplement a witness's recollection. *Regina* v. *Burke*, 2 Cox C. C. 295. And the hearsay rule would not affect the admissibility of the previous declaration to support an impeached witness. See *Murphy* v. *State*, 41 Tex. Cr. R. 120, 51 S. W. 940. See also 2 WIGMORE, EVIDENCE, § 1130. But the principal case seems difficult to support.

FALSE IMPRISONMENT — ARREST WITHOUT WARRANT WHERE CRIME CHARGED NOT COMMITTED. — A bookseller having suffered repeated losses, and reasonably believing a certain clerk to be guilty of the thefts, caused him to be arrested without a warrant and prosecuted, on the charge of having stolen a particular book. This book had not in fact been stolen. *Held*, that the bookseller, though not liable for malicious prosecution, is liable for false imprisonment. *Walters* v. *Smith*, 30 T. L. Rep. 158.